

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 97-301-E - ORDER NO. 98-450

JUNE 16, 1998

IN RE: Hartsville H.M.A., Inc. and Carolina Power	)	ORDER
& Light Company,	)	RULING
	)	ON COMPLAINT
Complainants,	)	
	)	
vs.	)	
	)	
Pee Dee Electric Cooperative, Inc.,	)	
	)	
Respondent.	)	
	)	
	)	

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This matter comes before the Public Service Commission of South Carolina (the Commission) on the Complaint of Hartsville H.M.A, Inc. (Hartsville) and Carolina Power & Light (CP&L) (together, the Complainants) against Pee Dee Electric Cooperative, Inc. (Pee Dee or the Coop.). The Complaint involves the provision of electric service to the new Byerly Hospital complex, owned by Hartsville HMA, Inc., to be located on a 33.5 acre tract of land adjacent to the City of Hartsville. According to the original Complaint, the vast majority of the tract of land, and all of the portion upon which the buildings will be constructed, is in an area that was never assigned by the Commission to any electric supplier, although later testimony and exhibits showed that a portion of the land was assigned to CP&L. The Complainants stated their belief that a "customer choice" situation existed, whereby Hartsville could choose whichever electric

supplier it desired. Accordingly, Hartsville chose CP&L as its electric supplier, as opposed to Pee Dee. On or about May 22, 1998, the Complainants filed an amendment to the original Complaint, stating that a survey of the property and an analysis of the territorial boundaries and locations of lines as they relate to the planned location of the new hospital and its support buildings had recently been conducted. According to the amendment, the new survey and analysis demonstrate that all of the energy plant building and portions of the hospital and medical office building will be located within CP&L's assigned territory. Also, according to the Complainants, the survey and analysis also demonstrate that none of these buildings will be located entirely within 300 feet of an old line that Pee Dee was required by Court Order to remove. Therefore, according to the Complainants, because of these and other reasons, the choice of electric supplier is, pursuant to S.C. Code Ann. Section 58-27-620 (1976), a customer choice situation, and Byerly Hospital, pursuant to Hartsville H.M.A., has chosen CP&L as its electric supplier.

Pee Dee states that it has previously serviced a premise located within the subject property, and continued to maintain in place lines and poles on the tract of land so as to preserve its service rights. Accordingly, Pee Dee states, as per its original counterclaim, that the HMA site is within its assigned territory and corridor rights, and because the surrounding tract is in unassigned territory, that Pee Dee has the right to supply electric service to Hartsville H.M.A., and that, indeed, Hartsville H.M.A. had chosen Pee Dee as its electric supplier. Pee Dee alleges that it has an enforceable contract in that regard, and, that, in addition, that Hartsville H.M.A. is estopped from denying its choice of Pee Dee as its electric supplier, and further estopped to deny the contract with Pee Dee.

Accordingly, after the issuance of various prior procedural Orders, the Commission held a hearing on this matter on June 5, 1998 in the offices of the Commission, with the Honorable Guy Butler, Chairman, presiding. Hartsville H.M.A., Inc. was represented by Mark W. Buyck, Jr., Esquire. Carolina Power and Light was represented by William F. Austin, Esquire and Len S. Anthony, Esquire. Pee Dee Electric Cooperative, Inc. was represented by Arthur G. Fusco, Esquire, Wilburn Brewer, Esquire, and C.F.W. Manning, Esquire. Florence P. Belser, Staff Attorney, represented the Commission Staff.

The Complainants jointly presented as witnesses Dennis J. Turner, Wade H. Hicks, Emerson Gower, and Page H. Vaughan. The Coop. presented the testimony of Al Lassiter, Robert Williams, and Brian Kelley. The Commission Staff presented no witnesses.

We do note that, at the time of the hearing, we disallowed the presentation of the supplemental testimony and exhibits of Dennis J. Turner on behalf of CP&L. This testimony generally supported the allegations of the Amended Complaint filed by the Complainants. Because of this disallowance, and the absence of any other supporting testimony for the Amended Complaint, we will consider this case based on the allegations of the original complaint filed by Hartsville and CP&L, which is addressed by the testimony and exhibits in the record.

Accordingly, and after due consideration of the entire record in this case, we must hold that customer choice was appropriate in this case, and that Hartsville had the right to

choose CP&L as its electric supplier. Our reasoning, based on the record in the case, follows.

First, a review of the testimony of Page H. Vaughan, Director for Hartsville H.M.A. doing business as Byerly Hospital, reveals that no contract for service between Hartsville and Pee Dee for the provision of electric service was ever formalized. Vaughan stated that he alone never had authority to make such a contract with either Pee Dee or CP&L, and that he made it clear to the suppliers that any such agreement for service would have to be in writing and signed by Vaughan and approved by the Hartsville H.M.A. corporate office. Pee Dee presented testimony to the effect that Vaughan met with its representatives on February 14, 1997 and verbally agreed to take electric service from the Coop., and that Vaughan shook hands on the agreement. Vaughan testified that, although there was a meeting on that date, the parties were still negotiating various terms of a possible agreement. Two proposed electric agreements were later faxed to Vaughan at different times, but according to Vaughan, these agreements were never executed. Quite simply, we hold that no contract for electric service was ever executed between Hartsville H.M.A. and Pee Dee, despite Pee Dee's assertions to the contrary. Vaughan simply did not have the authority on his own to execute such an agreement, and it appears from the testimony that Vaughan informed both suppliers of this fact. Further, any monies expended by Pee Dee towards the furtherance of the goal of supplying electricity to the new hospital were spent on a voluntary basis, in our opinion. There was no detrimental reliance in this situation. Therefore, we do not believe that estoppel attached in any form.

Further, we hold that, under the circumstances of this case, Hartsville H.M.A. had the ability to contract with either Pee Dee or with CP&L to supply its electricity at the Byerly Hospital, and since Hartsville chose CP&L, we uphold that choice. This is based on our analysis of the application of the Territorial Assignment Act (the Act) to the facts in the case at bar. The situation presented is clearly one of “customer choice” under the Act.

The original testimony and exhibits of Dennis Turner for CP&L and Al Lassiter for the Coop. are determinative. It appears that the site of the proposed construction is a mixture of unassigned territory, CP&L assigned territory, and areas within 300 feet of lines of both CP&L and Pee Dee (corridors). Turner’s exhibit was a to-scale drawing which shows the four (4) medical facilities which are to be constructed as part of the hospital complex, and the location of an old Coop. line which ran perpendicular to Highway 151 into the site, with 300 foot corridors. Turner determined that a portion of the facilities consisting of the hospital, the medical office building, and the energy building lie more than 300 feet from the old Coop. line. Specifically, approximately 20 percent of the energy building lies more than 300 feet from the old Coop. line. Turner finally states that none of the three buildings lie totally within 300 feet of the old Coop. line. Lassiter, testifying on behalf of Pee Dee, notes that the main building of the hospital is located within the corridor created by the Pee Dee line, “except for an outside portico.” Also, the Medical Office building is within the same corridor, “except for a covered driveway.” The energy plant, according to Lassiter, is “almost entirely” within the Pee Dee corridor. (But see Turner testimony as quoted above.) Apparently, the fourth

building, a future office building, is not being built or planned for the near future. It appears from Lassiter Exhibit 6 (part of Hearing Exhibit 8) that the “outside portico” area, the “covered driveway,” and the “20 percent of the energy building” lie in CP&L territory. Also, it appears that parts of the planned parking lot and one of the driveways is within overlapping corridors of both electric suppliers, since both suppliers had lines running along the highway in front of the planned hospital site

S.C. Code Ann. Section 58-27-620 (1976) reads, in part, as follows: “With respect to service in all areas outside the corporate limits of municipalities, electric suppliers shall have rights and be subject to restrictions as follows: .....(1)(d) If chosen by the consumer, any premises initially requiring electric service after July 1, 1969, (i) Which are located wholly or partially within three hundred feet of the lines of such electric supplier and also wholly or partially within three hundred feet of the lines of another electric supplier, as each of such supplier’s lines exist on July 1, 1969 or as extended to serve consumers that the supplier has the right to serve or as acquired after July 1, 1969, .....(iii) Which are located partially within a service area assigned to such electric supplier and partially within a service area assigned to another electric supplier pursuant to Section 58-27-640 or are located partially within a service area assigned to such electric supplier pursuant to section 58-27-640 and partially within three hundred feet of the lines of another electric supplier, or are located partially within three hundred feet of the lines of such electric supplier, as such lines exist on July 1, 1969, or as extended to serve consumers it has the right to serve or as acquired after that date, and partially within a service area assigned to another electric supplier pursuant to section 58-27-640.....

The term “premises” is significant in this context. S.C. Code Section 58-27-610(2) (1976) states that the term “premises” means the building, structure, or facility to which electricity is being or is to be furnished; provided, that two or more buildings, structures or facilities which are located on one tract or contiguous tracts of land are utilized by one electric consumer for farming, business, commercial, industrial, institutional or governmental purposes, shall together constitute one “premises,” except that any such building, structure or facility shall not, together with any other building, structure or facility, constitute one “premises” if the electric service to it is separately metered and the charges for such service are calculated independently of charges for service to any other building, structure or facility.

In the present case, Hartsville H.M.A witness Vaughan’s testimony shows that each of the three buildings planned for present construction is to be separately metered. Therefore, under the above-captioned definition, since each building is separately metered, each building is a separate “premise.” However, it appears from the testimony that each building is partially within 300 feet of the old Coop. line, and partially within CP&L territory, if you consider the outside portico, and the covered driveway on the main building and medical building, respectively, as part of each “premise.”

In prior cases, we have taken a broad view of what constitutes “premises.” In our Order No. 85-1002 in Docket No. 85-186-E on December 2, 1985, in the case of Aiken Electric Cooperative, Inc., Complainant, vs. South Carolina Electric & Gas Company, Inc., Respondent, we held that the premises in that case “consisted of a number of structures including a large brick building which contained a liquor store, a convenience

store/party shop, and a service station, four gasoline dispenser pumps, gasoline tanks with pumps to serve the pump dispensers, a lighting system running down Martintown Road for approximately 300', a lighted canopy covering a fuel dispenser island including two diesel dispensers and one gasoline pump dispenser, and diesel and regular gasoline fuel tanks with submersible pumps to serve the pump dispensers... There were three driveway cuts to allow traffic access to the premises and the entire premises was paved with asphalt, concrete and/or gravel ("crusher run")..." Clearly, in that case, external features, such as parking lots and/or driveways were considered part of the premises.

We think the same principle applies in the case at bar. Specifically, the portico is part of the main hospital building, and the covered driveway is part of the medical building. The energy building lies within Pee Dee's corridor and CP&L's territory. We also note that a parking lot and driveway appurtenant to the main hospital and the medical building lie in overlapping corridors for both suppliers.

Therefore, we hold that the main hospital with the portico, the medical building with the covered driveway, and the energy building fall under S.C. Code Ann. Section 58-27-620(1)(d)(iii), which states that such premises have a customer choice for an electric supplier which "are located partially within a service area assigned to such electric supplier...and partially within three hundred feet of the lines of another electric supplier..." Also, the parking lot and driveway appurtenant to the main hospital building and the medical building fall under S.C. Code Ann. Section 58-27-620 (1)(d)(i), which holds that customer choice is dictated when premises "are located wholly or partially within three hundred feet of the lines of such electric supplier and also wholly or partially

within three hundred feet of the lines of another electric supplier, as each of such supplier's lines exist on July 1, 1969."....

Accordingly, we hold that the choice of electric supplier in this case clearly came under the "customer choice" provisions of the Code as stated above. Under the circumstances of this case, Hartsville had the right to choose CP&L as its electric supplier. We also hold that no enforceable contract between Hartsville and Pee Dee was ever formalized, nor is estoppel applicable.

We would also note Pee Dee's assertions during the hearing that CP&L provided Hartsville with two inappropriate and unduly preferential types of incentives and implications that these improper incentives were the reason that Hartsville selected CP&L rather than Pee Dee. The first alleged improper incentive was an alleged commitment by CP&L to refer CP&L employees and retirees to the Byerly Hospital for medical services. The second alleged improper incentive was the installation of certain lines and facilities without proper compensation.

We do not believe that any improper incentives were offered. The only commitment made was that CP&L would work with Byerly Hospital to make sure that that hospital was included in those facilities approved for use by CP&L employees, and that CP&L would make sure that its employees were aware of the services offered by Byerly. The \$500,000 mentioned in presentation materials used by CP&L with Hartsville was simply the historical annual amount of revenue that Byerly Hospital had realized from providing medical services to CP&L employees. As per CP&L witness Turner, there was not a commitment to ensure that Byerly would continue to realize this level of

revenues by providing services to CP&L employees, but simply to emphasize the magnitude of the relationship that had historically existed between the two companies. No incentives, monetarily or otherwise, were provided by CP&L to Hartsville in this regard.

Regarding the rates that CP&L charged for the installation of the electrical facilities necessary to serve the Byerly Hospital, CP&L witness Turner explained that all of the charges for the installation of facilities are pursuant to CP&L's filed Line Extension Plan which is on file with and has been approved by this Commission.

Thus, there were no improper incentives offered by CP&L in order to persuade Hartsville to obtain electric service from CP&L. Hartsville witness Vaughan testified that, among the reasons Hartsville chose CP&L over Pee Dee were service quality and reliability, and prior relationships and experience.

In summary, customer choice was appropriate in this case, and Hartsville was entitled to choose CP&L. There were no improper incentives given to persuade Hartsville to choose CP&L.

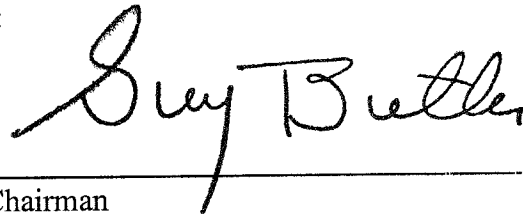
JUNE 16, 1998

PAGE 11

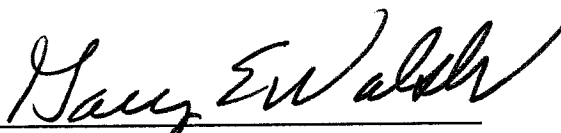

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This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

  
Chairman

ATTEST:

  
 Executive Director

(SEAL)